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5 UNITED STATES DISTRICT COURT  
6 EASTERN DISTRICT OF WASHINGTON

7 JOHN L. CORRIGAN,

8 Plaintiff,

9 vs.

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11 WSP OFFICER RANDALL E.  
12 ELKINS, LINCOLN COUNTY,  
13 AND CHIEF JUSTICE BARBARA  
14 MADSEN,

Defendants.

No. CV-13-053-LRS

**ORDER OF DISMISSAL**

15 **BEFORE THE COURT** are the Fed. R. Civ. P. 12(b)(6) Motions To  
16 Dismiss filed by Defendant Lincoln County (ECF No. 8) and Defendant Elkins  
17 (ECF No. 10). These motions are heard without oral argument. Plaintiff has  
18 responded to both motions. The court opts not to wait for a reply to be filed by  
19 Defendant Elkins and expedites hearing on both motions.

20 A Fed. R. Civ. P. 12(b)(6) dismissal is proper only where there is either a  
21 "lack of a cognizable legal theory" or "the absence of sufficient facts alleged  
22 under a cognizable legal theory." *Balistreri v. Pacifica Police Dept.*, 901 F.2d  
23 696, 699 (9th Cir. 1990). In reviewing a 12(b)(6) motion, the court must accept  
24 as true all material allegations in the complaint, as well as reasonable inferences  
25 to be drawn from such allegations. *Mendocino Environmental Center v.*  
26 *Mendocino County*, 14 F.3d 457, 460 (9th Cir. 1994); *NL Indus., Inc. v. Kaplan*,  
27 792 F.2d 896, 898 (9th Cir. 1986). The complaint must be construed in the light

1 most favorable to the plaintiff. *Parks School of Business, Inc. v. Symington*, 51  
2 F.3d 1480, 1484 (9th Cir. 1995). The sole issue raised by a 12(b)(6) motion is  
3 whether the facts pleaded, if established, would support a claim for relief;  
4 therefore, no matter how improbable those facts alleged are, they must be  
5 accepted as true for purposes of the motion. *Neitzke v. Williams*, 490 U.S. 319,  
6 326-27, 109 S.Ct. 1827 (1989). The court need not, however, accept as true  
7 conclusory allegations or legal characterizations, nor need it accept unreasonable  
8 inferences or unwarranted deductions of fact. *In re Stac Electronics Securities*  
9 *Litigation*, 89 F.3d 1399, 1403 (9<sup>th</sup> Cir. 1996). “Factual allegations must be  
10 enough to raise a right to relief above the speculative level . . . on the assumption  
11 that all the allegations in the complaint are true (even if doubtful in fact) . . . .”  
12 *Bell Atlantic Corporation v. Twombly*, 550 U.S. 544, 555, 127 S.Ct. 1955  
13 (2007). The factual allegations must allege a plausible claim. *Ashcroft v. Iqbal*,  
14 556 U.S. 662, 129 S.Ct. 1937, 1951 (2009).

15 This 42 U.S.C. Section 1983 action arises out of a traffic infraction the  
16 Plaintiff received for speeding on February 7, 2011. In his Complaint, Plaintiff  
17 alleges Washington State Patrol (WSP) Trooper Elkins did not have probable  
18 cause to stop the Plaintiff for speeding and that his testimony at trial before  
19 Lincoln County District Court Judge Joshua Grant was “unpersuasive,  
20 contradictory, and at times completely false.” Plaintiff’s Complaint recites that  
21 he was found to have committed the infraction and appealed to Lincoln County  
22 Superior Court Judge John Strohmaier who affirmed the district court’s decision.  
23 Plaintiff appealed to the Washington Court of Appeals (Division III) and then to  
24 the Washington Supreme Court. His appeals were “dismissed.”

25 As is apparent from the face of Plaintiff’s Complaint, his cause of action  
26 for damages against Trooper Elkins is barred by *Heck v. Humphrey*, 512 U.S.  
27 477, 114 S.Ct. 2364 (1994). Because the finding he had committed the  
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1 speeding infraction was not reversed on direct appeal and has not been  
2 “expunged by executive order, declared invalid by a state tribunal authorized to  
3 make such determination, or called into question by a federal court’s issuance of  
4 a writ of habeas corpus,” *Id.* at 487, his claim for damages is not cognizable. A  
5 judgment in favor of Plaintiff would “necessarily imply the invalidity of his  
6 conviction or sentence.” *Id.* The fact that Plaintiff was not convicted of a crime  
7 is irrelevant. *Heck* applies to a finding that a person has committed a traffic  
8 infraction. *Dauven v. Oregon*, 44 Fed. Appx. 255, 2002 WL 1881099 (9<sup>th</sup> Cir.  
9 2002); *Cordova v. Ely*, 2012 WL 3496619 (E.D. Wash. 2012) at \*3, n. 4,  
10 adopted at 2012 WL 3478477 (E.D. Wash. 2012). Additionally, Plaintiff’s  
11 conclusory allegations against Trooper Elkins are insufficient to render plausible  
12 his claim against Trooper Elkins. The allegations are insufficient to raise his  
13 claim “above the speculative level.” Plaintiff fails to state a claim against  
14 Trooper Elkins upon which relief can be granted.

15 Plaintiff alleges Lincoln County has a “policy and/or custom . . . to  
16 inadequately and improperly provide a forum for individuals who contested their  
17 traffic infractions by failing to provide a fair and impartial trial” and “to  
18 inadequately supervise and train its judges, thereby failing to adequately  
19 discourage further constitutional violations on the part of its judges.” Plaintiff’s  
20 cause of action for damages against Lincoln County is likewise barred by *Heck*.  
21 In dismissing his appeals, the Washington Court of Appeals and the Washington  
22 Supreme Court effectively found that Plaintiff received a fair and impartial trial.  
23 A judgment in favor of Plaintiff on his Section 1983 cause of action against  
24 Lincoln County would imply to the contrary. Furthermore, Lincoln County is  
25 not liable for alleged unconstitutional actions of its district and superior court  
26 judges because those judges do not act as municipal policymakers for Lincoln  
27 County, but rather act under state law. *Eggar v. City of Livingston*, 40 F.3d 312,

1 314 (9<sup>th</sup> Cir. 1994). Plaintiff fails to state a claim against Lincoln County upon  
2 which relief can be granted.

3 Plaintiff asserts a Section 1983 cause of action against Washington  
4 Supreme Court Chief Justice Barbara Madsen. He alleges that in her capacity as  
5 chair or co-chair of Washington's Board of Judicial Administration, Chief  
6 Justice Madsen is responsible for promulgation of Infraction Rules for Courts of  
7 Limited Jurisdiction (IRLJ) which "exhibit a deliberate indifference to the  
8 constitutional rights of persons . . . [to] due process and a fair and impartial  
9 trial." Plaintiff alleges that pursuant to those rules: "a) [t]he trial judge also acts  
10 as the prosecutor; b) "[e]vidence is inadequately and improperly handled; c)  
11 [d]iscovery is inadequately and improperly limited; and d) appeals are  
12 inadequately and improperly reviewed." Plaintiff apparently seeks a declaratory  
13 judgment that these rules violate constitutional rights to due process and a fair  
14 trial.

15 Although Chief Justice Madsen has not yet moved for dismissal of the  
16 Complaint as to her, Plaintiff's conclusory allegations regarding the deficiencies  
17 of the IRLJ are insufficient to render plausible his claim for declaratory relief. A  
18 *sua sponte* dismissal of the cause of action against Chief Justice Madsen is  
19 warranted as it is obvious the Complaint fails to state a claim against her upon  
20 which relief can be granted. The inadequacy of the claim is apparent as a matter  
21 of law. *Levald, Inc. v. City of Palm Desert*, 998 F.2d 680, 686-87 (9<sup>th</sup> Cir.  
22 1993).

23 The Fed. R. Civ. P. 12(b)(6) Motions To Dismiss filed by Defendant  
24 Lincoln County (ECF No. 8) and Defendant Elkins (ECF No. 10) are  
25 **GRANTED** and the causes of action asserted against those Defendants are  
26 **DISMISSED with prejudice**. On its own motion, the cause of action asserted  
27 against Defendant Madsen is **DISMISSED with prejudice**. Accordingly, the

1 action as a whole is **DISMISSED with prejudice**.

2 **IT IS SO ORDERED.** The District Executive shall enter judgment  
3 accordingly and forward copies of the judgment and this order to Plaintiff and to  
4 counsel of record for Defendants. The file shall be **CLOSED**.

5 **DATED** this 20th of May, 2013.

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7 *s/Lonny R. Suko*

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LONNY R. SUKO  
10 United States District Judge  
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